

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

PAUL C. BOLIN,

Petitioner,

v.

ON HABEAS CORPUS,

Respondent.

No. 1:24-cv-00059-KES-SKO (HC)

ORDER ADOPTING FINDINGS AND
RECOMMENDATIONS, DISMISSING
PETITION FOR WRIT OF HABEAS
CORPUS, DECLINING TO ISSUE
CERTIFICATE OF APPEALABILITY, AND
DIRECTING CLERK OF COURT TO ENTER
JUDGMENT AND CLOSE CASE

Doc. 5

ORDER GRANTING MOTION TO
WITHDRAW MOTION TO VACATE

Docs. 11, 12

Petitioner Paul C. Bolin is a state prisoner proceeding pro se and in forma pauperis with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. This matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On January 18, 2024, the assigned magistrate judge issued findings and recommendations to dismiss the petition as successive. Doc. 5. Those findings and recommendations were served upon all parties and contained notice that any objections thereto were to be filed within twenty-one (21) days after service. On February 5, 2024, petitioner filed objections to the findings and recommendations. Doc. 7.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de
2 novo review of the case. Having carefully reviewed the file, including petitioner's objections, the
3 Court concludes that the magistrate judge's findings and recommendations are supported by the
4 record and proper analysis. The instant action is successive,¹ and petitioner did not obtain leave
5 from the Ninth Circuit before filing his petition, as required by 28 U.S.C. § 2244(b)(3)(A).
6 "When the AEDPA is in play, the district court may not, in the absence of proper authorization
7 from the court of appeals, consider a second or successive habeas application." *Cooper v.*
8 *Calderon*, 274 F.3d 1270, 1274 (9th Cir. 2001) (quoting *Libby v. Magnusson*, 177 F.3d 43, 45
9 (1st Cir. 1999)). The Court must therefore dismiss the petition.

10 In his objections, petitioner contends that the magistrate judge erred by construing his
11 initial filing as a habeas corpus petition, and therefore, he argues, he did not have to seek leave
12 from the Ninth Circuit before filing this action. Doc. 7 at 1–2. Petitioner's argument is
13 unavailing.

14 The Ninth Circuit has explained that claims by prisoners that relate to their imprisonment
15 may be brought to federal court through two vehicles: a habeas corpus petition or a § 1983
16 complaint. *Nettles v. Grounds*, 830 F.3d 922, 927 (9th Cir. 2016). These two avenues for relief,
17 habeas and § 1983, are mutually exclusive. *Id.* at 927–33. A claim falls "within the core of
18 habeas corpus" whenever a favorable ruling on the claim would necessarily result in the
19 termination of custody or acceleration of the future date of release from custody. *See id.* at 928–
20 30. "[H]abeas [is the only] available [vehicle] for claims that seek 'invalidation (in whole or in
21 part) of the judgment authorizing the prisoner's confinement.'" *Id.* at 929 (quoting *Wilkinson v.*
22 *Dotson*, 544 U.S. 74, 83 (2005)).

23 The petition asserts that the prosecutor and the state courts conspired to unlawfully
24 convict him and that their actions were criminal. Doc. 1 at 1–3. Petitioner concedes in his

25 ¹ Petitioner previously sought federal habeas relief in this Court with respect to the same
26 conviction. *See Bolin v. Chappell*, No. 1:99-cv-05279-LJO-SAB, 2016 WL 3213551 (E.D. Cal.
27 June 9, 2016) (denied on the merits); *Bolin v. Kern County Superior Court*, No. 1:17-cv-00985-
28 LJO-SAB (dismissed as successive); *Bolin v. On Habeas Corpus*, No. 1:18-cv-00692-LJO-SAB
(dismissed as successive); *Bolin v. State of California*, No. 1:22-cv-00670-ADA-EPG (dismissed
as successive).

1 objections that his petition alleges “fraud upon the [trial] court” and “forfeiture of jurisdiction,”
2 and that success in this action “would render and demand habeas relief.” Doc. 7 at 2. His
3 petition, too, asks the Court to “render [a] decision that . . . makes null and void [his] conviction
4 and sentence.” Doc. 1 at 4. It is patently clear that habeas is the exclusive vehicle for petitioner’s
5 claims, and the magistrate judge therefore correctly construed his initial filing as a habeas
6 petition.

7 The Court notes that petitioner also filed a motion to vacate pursuant to 28 U.S.C. § 2255
8 on April 2, 2024. Doc. 11. He then filed a request to withdraw the motion to vacate on May 9,
9 2024. Doc. 12. As petitioner acknowledges, § 2255 applies to federal prisoners, not state
10 prisoners such as petitioner. *Id.* at 1. The Court therefore grants petitioner’s motion to withdraw
11 the motion to vacate.

12 Having found that petitioner is not entitled to habeas relief, the Court now turns to
13 whether a certificate of appealability should issue. A petitioner seeking a writ of habeas corpus
14 has no absolute entitlement to appeal a district court’s denial of his petition, and an appeal is
15 allowed only in certain circumstances. *Miller-El v. Cockrell*, 537 U.S. 322, 335-36 (2003); 28
16 U.S.C. § 2253. Where, as here, the Court denies habeas relief on procedural grounds without
17 reaching the underlying constitutional claims, the Court should issue a certificate of appealability
18 “if jurists of reason would find it debatable whether the petition states a valid claim of the denial
19 of a constitutional right and that jurists of reason would find it debatable whether the district court
20 was correct in its procedural ruling.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). “Where a
21 plain procedural bar is present and the district court is correct to invoke it to dispose of the case, a
22 reasonable jurist could not conclude either that the district court erred in dismissing the petition or
23 that the petitioner should be allowed to proceed further.” *Id.*

24 In the present case, the Court finds that reasonable jurists would not find the determination
25 that the petition should be dismissed debatable, wrong, or deserving of encouragement to proceed
26 further. Therefore, the Court declines to issue a certificate of appealability.

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Accordingly,

1. The findings and recommendations issued on January 18, 2024, Doc. 5, are adopted in full;
2. Petitioner's request to withdraw, Doc. 12, his motion to vacate, Doc. 11, is granted;
3. The petition for writ of habeas corpus is dismissed;
4. The Clerk of Court is directed to enter judgment and close the case; and
5. The Court declines to issue a certificate of appealability.

IT IS SO ORDERED.

Dated: January 21, 2025


UNITED STATES DISTRICT JUDGE